

**Deputies of Clerk of the District Court, Number Of.
Deputies in Excess of the Number Allowed by Law, When
Allowed.**

Deputies in excess of the number allowed by law may be permitted by the board of county commissioners when in their

judgment the duties of the office require it.

The salary of each deputy may be fixed by the board of county commissioners at any sum not in excess of the maximum allowed by law.

Helena, Montana, April 14, 1908.

Hon. B. B. Law,
County Attorney,
Bozeman, Montana.

Dear Sir:—

I have your letter of March 25, 1908, requesting my opinion as to whether or not a board of county commissioners of a county of the fifth class may allow more than one deputy to the clerk of the district court, or, in the event that more than one deputy is appointed, whether the total salary may exceed twelve hundred dollars per year.

Section 4599, Political Code, as amended by the Ninth legislative assembly, limits the number of deputies for a district clerk in counties of the fifth class to one. Section 4596, Political Code, prescribes the salary of the deputy clerk of the district court in counties of the fifth class, and fixes the maximum at \$1200.00 per year. The Tenth legislative assembly, Session Laws 1907, page 178, passed an act authorizing the board of county commissioners in each county to allow a greater number of deputies than the maximum number allowed by law and to fix the salaries of such deputies appointed in excess of the maximum allowed by law. Acting under the authority of this statute the board of county commissioners may, when in their judgment a greater number of deputies is needed "for the faithful and prompt discharge of the duties of any county office," allow the appointment of additional deputies and fix the salaries of each at no more than the maximum allowed by law.

The statute giving this authority is somewhat ambiguous and might be susceptible to the interpretation that deputies to a greater number than the maximum allowed by law might be allowed by the board of county commissioners, but that their aggregate salary would not exceed the maximum allowed one. This, however, is not my interpretation of the law.

I refer you to the case of Hogan vs. Cascade County, 92 Pac., page 529, as a full discussion of the question submitted by you is included in the opinion of the supreme court. The statute of 1907 above referred to is there alluded to in the following language:

"At the last session of the legislature a law was enacted authorizing the boards of commissioners of the respective counties to allow such additional deputies, in excess of the maximum prescribed by law, as may be required "for the faithful and prompt discharge of the duties of any county office, and to fix the salaries of such deputies" within the prescribed maximum. Sess. Laws 1907, p. 479. This fact furnishes some evidence of the general intention of the legislature in dealing with the

subject under consideration to prescribe a rule applicable to all county officers alike."

You further request a copy of the opinion construing the provisions of Chapter 110 of the acts of 1907. On April 30, 1907, I addressed an opinion to Hon. Thomas D. Tuttle, Esq., secretary state board of health, which I believe is the one to which you refer, and I enclose you a copy thereof herewith.

Very truly yours,

ALBERT J. GALEN,

Attorney General.